

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Applications for Consent to the Assignment of
Licenses Pursuant to Section 310(d) of the
Communications Act from NextWave Personal
Communications Inc., Debtor-in-Possession, and
NextWave Power Partners Inc, Debtor-in-Possession,
to Subsidiaries of Cingular Wireless LLC

WT Docket 03-217

File Nos. 0001461949, *et al.*

To: Chief, Wireless Telecommunications Bureau

**REQUEST FOR APPROVAL TO WITHDRAW AND
DISMISS WITH PREJUDICE CERTAIN PLEADINGS**

NY Telecom, LLC (“NY Telecom”) and Eldorado Communications, LLC (“Eldorado”) (collectively, “Petitioners”), pursuant to 47 C.F.R. §1.935, hereby request that the Commission permit Petitioners to withdraw and dismiss with prejudice several pleadings relating to certain C Block, D, Block, E Block, and F Block personal communications service (“PCS”) licenses (the “Licenses”) for which NextWave Personal Communications Inc. and NextWave Power Partners Inc. (jointly “NextWave”) were the high bidders at FCC spectrum auctions that concluded in 1996 and 1997. In particular, Petitioners seek to withdraw a Petition to Deny filed at the Commission and related challenges filed at the Commission and in the United States Court of Appeals for the District of Columbia Circuit in connection with applications for consent to assign several of NextWave’s Licenses, or components thereof, to Cingular Wireless LLC (collectively, the “Assignment Applications Challenges”).¹

¹ The Commission denied Petitioners’ Petition to Deny in *In re Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave*

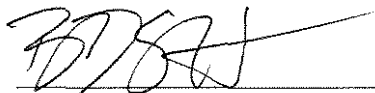
This Request is a byproduct of a settlement agreement (the “Agreement”) between NextWave and Petitioners. The Agreement, a copy of which is attached hereto as Exhibit A, provides that Petitioners will withdraw and dismiss with prejudice the Assignment Applications Challenges. In return, Petitioners will receive payment for legitimate and prudent expenses incurred in prosecuting those challenges (including preparation of all related pleadings), up to a financial cap agreed to by the parties. Declarations satisfying the requirements of the Commission’s rules are provided as Exhibits B, C, and D.

The Commission has long “encourage[d] settlement of conflicts in order to eliminate the need for further litigation and the expenditure of further time and resources by the parties and the Commission, and to speed service to the public.” *In re Sunset Bus and Commercial, Inc.*, 18 F.C.C.R. 1915 (WTB 2003) (footnote omitted); *see also In re Application of State of New Hampshire*, 14 F.C.C. R. 3607, ¶17 (WTB 1999). The attached Agreement advances all of these Commission goals, as it allows the parties and the Commission to avoid the expenditure of substantial resources in resolving Petitioners’ various challenges, and it expedites the assignment of certain of the Licenses, or components thereof, to Cingular, thereby speeding service to the public.

Personal Communications Inc., Debtor-in-Possession, and NextWave Power Partners Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC, WT Docket 03-217 (rel. Feb. 12, 2004). Petitioners have challenged the Commission’s action in the D.C. Circuit. *See Eldorado Communications, LLC v. FCC*, Docket Nos. 04-1067 & 04-1068 (consolidated cases). The Agreement calls for Petitioners to dismiss the D.C. Circuit challenges with prejudice.

Accordingly, Petitioners respectfully request that the Commission (a) approve the Agreement, and (b) permit the withdrawal with prejudice of the Assignment Applications Challenges.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. Goldberg', is written over a horizontal line.

Henry Goldberg
Jonathan L. Wiener
Brita Dagmar Strandberg

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, NW
Washington, DC 20036
(202) 429-4900
Its Attorneys

March 18, 2004

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made this 17th day of March, 2004, by and among NextWave Personal Communications Inc. ("NPCI") and NextWave Power Partners Inc. ("NPPI") (NPCI and NPPI hereinafter sometimes collectively referred to as "NextWave"), and Eldorado Communications, LLC and NY Telecom, LLC (collectively, "Petitioners"). The signatories to this Agreement will be referred to collectively as the "Parties" and each, individually, as a "Party."

Preamble

WHEREAS, in 1997 the Federal Communications Commission ("FCC") issued to NextWave certain C Block, D, Block, E Block and F Block personal communications service ("PCS") licenses (the "Licenses") for which NextWave was the high bidder at FCC spectrum auctions that concluded in 1996 and 1997;

WHEREAS, on June 8, 1998 (the "Petition Date"), NPCI and NPPI each filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York, White Plains division (the "Bankruptcy Court") where their cases remain pending under Case No. 98-B-21529 (ASH) (jointly administered) (the "Bankruptcy Cases");

WHEREAS, throughout the Bankruptcy Cases, NextWave has sought to resolve all issues with respect to the Licenses and claims against its bankruptcy estates, including but not limited to through the filing of two different plans of reorganization and modifications thereto, which plans were ultimately withdrawn or abandoned as a result of ongoing disputes;

WHEREAS, on January 27, 2003, the United States Supreme Court ruled in the case of *Federal Communications Commission v. NextWave Personal Communications Inc.*, 537 U.S. 293 (2003) (the "Supreme Court Decision") that the FCC's cancellation of the Licenses violated the Bankruptcy Code, thus clarifying that NextWave holds the Licenses;

WHEREAS, since the Supreme Court Decision, NextWave has continued its efforts to resolve any and all potential issues with respect to the Licenses and any and all claims against its bankruptcy estates prior to and in conjunction with ultimately confirming a plan of reorganization and concluding the Bankruptcy Cases;

WHEREAS, on August 4, 2003, NextWave executed a purchase agreement (the "Cingular Agreement") with Cingular Wireless LCC ("Cingular") pursuant to which NextWave agreed to seek to assign its rights and interests in certain of the Licenses to Cingular;

WHEREAS, the Bankruptcy Court approved the Cingular Agreement on September 25, 2003;

WHEREAS, on November 5, 2004, Petitioners filed a Petition to Deny (“Petition to Deny”) asking the Commission to deny NextWave’s effort to assign its rights and interests in certain of the Licenses to Cingular;

WHEREAS, on February 12, 2004, the FCC released an order, FCC 04-26, approving applications to assign NextWave’s rights, title to, and interest in certain of the Licenses, or components thereof, to subsidiaries of Cingular (the “FCC Assignment Order”) in accordance with the Cingular Agreement;

WHEREAS, on February 23, 2004, the Petitioners filed with the United States Court of Appeals for the District of Columbia Circuit (the “D.C. Circuit”) a Petition for Review, Docket No. 04-1068 (the “Petition for Review”), and a Notice of Appeal, Docket No. 04-1067 (the “Notice of Appeal”) concerning the FCC Assignment Order, alleging, among other things, that it was adopted in violation of the Administrative Procedures Act;

WHEREAS, the prosecution of the Petition to Deny, the Petition for Review, and the Notice of Appeal by the Petitioners caused them to incur a variety of expenses that the Parties believe are legitimate and prudent;

WHEREAS, the Parties believe it is in their mutual best interest to resolve through settlement all past, pending or potential claims or issues raised or which could be raised by the Petitioners relating to the Cingular Agreement;

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be bound, do hereby covenant and agree as follows:

1.0 Settlement

1.1 Within one (1) business day of the date upon which all Parties have executed this Agreement as set forth on the signature page herein: (a) NextWave shall file with the Bankruptcy Court the Notice, Motion and proposed Order, which are attached hereto as Exhibit A, seeking the Bankruptcy Court’s approval of this Agreement; and (b) pursuant to the FCC rule governing the withdrawal of certain filings, 47 C.F.R. § 1.935 (the “Withdrawal Rule”), the Petitioners shall file with the FCC Wireless Telecommunications Bureau (the “WTB”) a Request for Approval to Withdraw And Dismiss With Prejudice Certain Pleadings (the “Withdrawal Request”) in the form contained in Exhibit B to this Agreement, as modified, to the extent Petitioners may reasonably deem required to comport with the requirements of the Withdrawal Rule. NextWave shall notify Petitioners as soon as the Bankruptcy Court rules on the aforementioned Bankruptcy pleadings. The date upon which the Bankruptcy Court issues an Order approving this Agreement, without condition material adverse to either Party (the “Approval Order”), is referred to herein as the “Bankruptcy Approval Date.”

1.2 As part of the consideration for this Agreement, on, if at all practical, and in no event later than one business day after the later of (1) the date that the WTB provides Public Notice (the "Public Notice") approving the Withdrawal Request without condition material adverse to either Party (the "FCC Approval Date") and (2) the date that the Petitioners receive the Approval Order, Petitioners shall file motions with the D.C. Circuit to dismiss the Petition for Review and the Notice of Appeal with prejudice (the "Dismissal Motions"). The Dismissal Motions shall be made in the forms contained in Exhibit C to this Agreement.

1.3 In consideration of the Petitioners' faithful performance of their obligations under this Agreement, NextWave shall pay the Petitioners the sum of Twenty Five Thousand dollars (\$25,000.00). Payment shall be made in the form of available cash by wire transfer or such other commercially reasonable means as specified by the Petitioners in writing. The payments described in this Section 1.4 shall be made in the amounts and at the times described in Section 1.5.

1.4 The payment of the amount described in Section 1.4 (the "Settlement Payment") shall be as follows: (a) Twelve Thousand, Five Hundred dollars (\$12,500.00) to be paid on, if at all practical, and in no event later than one business day after, the later of (1) the FCC Approval Date and (2) the Bankruptcy Approval Date; and (b) Twelve Thousand, Five Hundred dollars (\$12,500.00) to be paid on the date that the Parties are notified that the D.C. Circuit has granted the Dismissal Motions; provided, however, in the event that the FCC requires a reduction of the Settlement Payment, the payments specified in this Section 1.4 shall be adjusted (but in no event to be less than zero (0)) so that the Settlement Payment does not exceed the amount authorized by the FCC. Any such reduction of the Settlement Payment that is required by the FCC shall not affect Petitioners' obligation to file the Dismissal Motions, nor shall it affect the finality of the D.C. Circuit's grant of the Dismissal Motions or the WTB's grant of the Withdrawal Request.

1.5 Except to defend such rights as are created by this Agreement and subject to Sections 1.6 and 3.3 below, Petitioners and their principals agree to forever refrain and desist from making any claims or taking any other actions, either directly or indirectly, with respect to NextWave, the Licenses, or the Bankruptcy Cases (collectively, the "NextWave Related Matters") provided, that nothing herein shall prevent Petitioners from filing such pleadings or other documents as may be reasonably required to preserve its position as to any matter pending prior to the time that the Notification of Withdrawal is required under Section 1.2 above to be filed with the FCC.

1.6 Save only for the provisions of Articles 2 and 4 below, this Agreement shall be null and void and without further effect if both the Approval Order and the Public Notice are not issued by March 31, 2004.

2.0 Compromise

2.1 The Parties agree and acknowledge that this Agreement is the result of a compromise and shall never be construed as an admission by any Party of any liability,

wrongdoing, or responsibility on its part or on the part of its predecessors, successors, merger partners, parents, subsidiaries, licensees, affiliates, assigns, agents, directors, officers, employees, and shareholders.

2.2 The Parties agree and acknowledge that this Agreement is the result of a compromise and shall never be construed as an admission by any Party of the merits of another Party's contentions regarding or in any way related to any of the NextWave Related Matters.

3.0 Release

3.1 In consideration hereof, subject to Sections 1.6 and 3.3 hereof, Petitioners, their principals, successors, merger partners, parents, subsidiaries, divisions, affiliates, agents, directors, officers, employees, representatives, servants, companies, corporations, limited liability corporations, ventures, partnerships, shareholders, licensees, sublicensees and assigns hereby release and forever discharge NextWave, its principals, successors, merger partners, parents, subsidiaries, divisions, affiliates, agents, directors, officers, employees, representatives, servants, companies, corporations, limited liability corporations, ventures, partnerships, shareholders, licensees, sublicensees and assigns, from and against all actions, claims, suits, demands, damages, judgments, causes of action, debts, liabilities, or controversies of any kind whatsoever, whether matured or unmatured, whether at law or in equity, whether before a local, state, federal, or foreign court, tribunal, administrative agency or commission, and whether now known or unknown, liquidated or unliquidated, that any of the Petitioners now has or may have had, on behalf of itself or any other person or entity, at any time prior to and including the date of this Agreement or hereafter can, shall, or may have or claim to have arising out of or relating to the NextWave Related Matters.

3.2 In consideration hereof, NextWave, subject to Sections 1.6 and 3.3 hereof, its principals, successors, merger partners, parents, subsidiaries, divisions, affiliates, agents, directors, officers, employees, representatives, servants, companies, corporations, limited liability corporations, ventures, partnerships, shareholders, licensees, sublicensees and assigns hereby release and forever discharge Petitioners, their principals, successors, merger partners, parents, subsidiaries, divisions, affiliates, agents, directors, officers, employees, representatives, servants, companies, corporations, limited liability corporations, ventures, partnerships, shareholders, licensees, sublicensees and assigns, from and against all actions, claims, suits, demands, damages, judgments, causes of action, debts, liabilities, or controversies of any kind whatsoever, whether matured or unmatured, whether at law or in equity, whether before a local, state, federal, or foreign court, tribunal, administrative agency or commission, and whether now known or unknown, liquidated or unliquidated, that NextWave now has or may have had, on behalf of itself or any other person or entity, at any time prior to and including the date of this Agreement or hereafter can, shall, or may have or claim to have arising out of or relating to the NextWave Related Matters.

3.3 Nothing in Paragraphs 3.1 or 3.2 of this Agreement shall prevent the Parties from asserting or pursuing any claim to enforce the terms of this Agreement or any other settlement agreement between the parties.

4.0 Confidentiality

4.1 The Parties understand and agree that the negotiations leading to, and terms of, this Agreement are confidential and further agree not to disclose to anyone the existence or terms of this Agreement or any matters pertaining to this settlement, unless such disclosure is (i) lawfully required by any governmental agency; (ii) otherwise required by law including legally required financial reporting; (iii) necessary in any legal proceeding in order to enforce any provision of this Agreement; (iv) to the Bankruptcy Court; (v) to Cingular Wireless LLC; or (vi) to the Creditors' Committee or debtor-in-possession lender in the Bankruptcy Cases.

4.2 The Parties agree that each may disclose the terms of this Agreement to their auditors, accountants, tax advisors, and/or legal counsel only to the extent required for professional advice from those sources and only after securing a commitment from such professionals to maintain the confidentiality of the terms of this Agreement to the extent possible considering the purpose for which the terms of the Agreement are needed by the auditors, tax advisors, or legal counsel. Paragraph 4.1 does not apply to information requested by subpoena or other court process. The Parties agree that they will notify each other in writing within five (5) calendar days of the receipt of any subpoena, court order, or administrative order requiring disclosure of information subject to the non-disclosure provision of Paragraph 4.1.

5.0 Best Efforts.

5.1 Each Party shall use commercially reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable and consistent with applicable law to carry out all of its respective obligations under this Agreement. NextWave and the Petitioners, each at its own expense, shall cooperate in providing all information and taking all steps reasonably necessary, desirable or appropriate to expedite the preparation, filing, prosecution and approval of the Approval Order, the Dismissal Motions, and the Withdrawal Request. In the event any person challenges any filing made pursuant to this Agreement, then NextWave and the Petitioners shall oppose such challenge until such time as it is dismissed and the period for seeking reconsideration, review, or appeal of such dismissal is exhausted. Each Party shall be given a reasonable opportunity to contribute to and to review any and all filings made with the Bankruptcy Court, any other court, the FCC, or the WTB in connection with this Agreement.

6.0 Miscellaneous

6.1 This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their predecessors, successors, merger partners, parents, subsidiaries, affiliates, assigns, licensees, agents, directors, officers, employees, and shareholders.

6.2 All notices which may be required or given hereunder shall be in writing addressed to the respective addresses of the parties hereto as shown below, posted in the U.S. mail by certified or registered mail, postage pre-paid or delivered by recognized overnight courier or by any other comparable means. Such notices shall be effective upon acknowledged receipt.:

Notices to NextWave:

NextWave Telecom Inc.
411 West Putnam, 2nd Floor
Greenwich, CT 06830
Attn: General Counsel
(203) 422-6770

Notices to Petitioners:

Stephen Roberts
5350 Poplar Avenue
Suite 875
Memphis, TN 38119

With a copy to:

Henry Goldberg
Jonathan L. Wiener
Brita D. Strandberg
Goldberg, Godles, Wiener & Wright
1229 19th Street, NW
Washington, DC 20036

6.3 This document contains the complete agreement between, and contains all of the promises and undertakings of, the Parties. Any and all prior agreements, representations, negotiations, and undertakings between the Parties, oral or written, express or implied, with respect to the subject matter hereof, are hereby superceded and merged herein.

6.4 This Agreement may not be revised or modified without the mutual written consent of the Parties.

6.5 The Parties agree that if either Party initiates any litigation, proceeding, or other legal action relating to this Agreement, the Party in whose favor such proceeding is decided shall be entitled to recover from the other Party all of its costs and expenses (including, without limitation, reasonable attorney's fees).

6.6 This Agreement shall be governed, in all respects, under the laws of the State of New York, irrespective of its choice of law rules and, to the extent applicable, the federal bankruptcy laws. So long as the Bankruptcy Cases are pending, venue shall lie only in

the Bankruptcy Court and thereafter, or if the Bankruptcy Court lacks jurisdiction, venue shall be in the District of Columbia.

6.7 The undersigned represent and warrant that he or she is authorized to execute this Agreement and to bind the Parties thereto.

6.8 This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

By: Eldorado Communications, LLC
Name: [Signature]
Title: Secretary, Director

By: N.Y. Telecom, LLC
Name: [Signature]
Title: President

By: NextWave Power Partners Inc
Name: Freda Casanovi
Title: Executive Vice President, General Counsel

By: NextWave Personal Communications Inc.
Name: Freda Casanovi
Title: Executive Vice President, General Counsel

Exhibit BDeclaration

I, Stephen Roberts, pursuant to Section 1.935 of the Commission's Rules, hereby declare under penalty of perjury that NY Telecom, LLC has neither received nor will receive any money or other consideration in exchange for the withdrawal of the Assignment Applications Challenges (as defined in the pleading to which this declaration is attached) other than the mutual promises contained in the settlement agreement, a copy of which is provided herewith. The payment specified in the settlement agreement is limited to the reasonable and prudent costs as required by 47 C.F.R. § 1.935, and as demonstrated by the attached "Joint Itemized Accounting of Expenses of Eldorado Telecommunications, LLC and NY Telecom, LLC."

NY Telecom, LLC

By: 

Dated: March 18, 2004

Joint Itemized Accounting of Expenses of
Eldorado Communications, LLC and NY Telecom, LLC

Pursuant to Section 1.935(a)(3) of the Commission's Rules, Eldorado and NY Telecom are required to provide the Commission with an itemized accounting of their reasonable and prudent expenses incurred in preparing and prosecuting the Assignment Applications Challenges. Eldorado and NY Telecom do not have an hourly fee arrangement with counsel, and counsel's fee reimburses counsel for their work on matters in addition to the Assignment Applications Challenges. Eldorado and NY Telecom, through counsel, have determined that would be reasonable and appropriate to attribute to the Assignment Applications Challenges a proportion of counsel's total fee equal to the proportion of counsel's total time spent on the Assignment Applications Challenges to counsel's total time covered by the relevant fee arrangement. The amount attributable to the Assignment Applications Challenges, along with related expenses, exceeds \$25,000.

Exhibit CDeclaration

I, Stephen Roberts, pursuant to Section 1.935 of the Commission's Rules, hereby declare under penalty of perjury that Eldorado Communications, LLC has neither received nor will receive any money or other consideration in exchange for the withdrawal of the Assignment Applications Challenges (as defined in the pleading to which this declaration is attached) other than the mutual promises contained in the settlement agreement, a copy of which is provided herewith. The payment specified in the settlement agreement is limited to the reasonable and prudent costs as required by 47 C.F.R. § 1.935, and as demonstrated by the attached "Joint Itemized Accounting of Expenses of Eldorado Telecommunications, LLC and NY Telecom, LLC."

Eldorado Communications, LLC

By:  _____

Dated: March 18, 2004

Joint Itemized Accounting of Expenses of
Eldorado Communications, LLC and NY Telecom, LLC

Pursuant to Section 1.935(a)(3) of the Commission's Rules, Eldorado and NY Telecom are required to provide the Commission with an itemized accounting of their reasonable and prudent expenses incurred in preparing and prosecuting the Assignment Applications Challenges. Eldorado and NY Telecom do not have an hourly fee arrangement with counsel, and counsel's fee reimburses counsel for their work on matters in addition to the Assignment Applications Challenges. Eldorado and NY Telecom, through counsel, have determined that would be reasonable and appropriate to attribute to the Assignment Applications Challenges a proportion of counsel's total fee equal to the proportion of counsel's total time spent on the Assignment Applications Challenges to counsel's total time covered by the relevant fee arrangement. The amount attributable to the Assignment Applications Challenges, along with related expenses, exceeds \$25,000.

Exhibit DDeclaration

I, Frank A. Cassou, under penalty of perjury, do hereby declare as follows:

1. I am an officer of NextWave Personal Communications Inc. and NextWave Power Partners Inc. ("NextWave").

2. NextWave has not paid and will not pay any money or other consideration in exchange for the withdrawal by NY Telecom, LLC and Eldorado Communications, LLC of the Assignment Applications Challenges (as defined in the pleading to which this declaration is attached), other than the mutual promises contained in the settlement agreement, a copy of which is associated herewith. The payment specified in the settlement agreement is limited to the legitimate and prudent costs of preparing the Assignment Applications Challenges as required by 47 C.F.R. §1.935.



Frank A. Cassou

March 18, 2004

CERTIFICATE OF SERVICE

A copy of the foregoing "Request for Approval of Withdrawal of Pleadings and Motion To Dismiss With Prejudice" has been served this 18th day of March, 2004, upon the following:

Michael Wack, Esquire
NextWave Telecom, Inc.
601 Thirteenth Street, N.W.
Suite 320 North
Washington, DC 20005


Thomas Gutierrez, Esquire
Lukas, Nace, Gutierrez & Sachs, Chtd.
1111 Nineteenth Street, NW, Suite 1200
Washington, DC 20036

Donald B. Verrilli, Jr.
Ian Heath Gershengorn
Jenner & Block
601 Thirteenth Street, NW
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5565 Glenridge Connector
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2001 K Street, N.W., Suite 802
Washington, DC 20006

Robert S. Foosaner
Lawrence R. Krevor
James B. Goldstein
2001 Edmund Halley Drive
Reston, VA 20191



Brita Dagmar Strandberg